

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Theodurus Strous,

Plaintiff

v.

Bernard McPheely, et al.,

Defendants

Case No. 2:22-cv-00256-CDS-EJY

Ordering Supplemental Briefing

In February 2023, the Scio defendants and Adamas defendants filed motions to dismiss the second amended complaint. ECF Nos. 28, 30. One argument raised by the Adamas defendants is that this court lacks subject-matter jurisdiction under 28 U.S.C. § 1332 because nominal defendant Scio Diamond Technology Corp. should properly be aligned as a plaintiff in this suit, thus destroying diversity. ECF No. 30 at 8–9. Plaintiff Theodurus Strous' response focuses largely on his allegations concerning the alleged antagonism of the individual defendant directors who were not in control of Scio at the time this suit was filed. *See In re Digimarc Corp. Derivative Litig.*, 549 F.3d 1223, 1236 (9th Cir. 2008) (holding that antagonism must exist at the time suit was filed).

Because this court must resolve the jurisdictional question, the parties are ordered to submit supplemental briefing by June 28, 2024, on whether Scio was properly pled as a nominal defendant given Scio's state at the time the suit was filed. Defendants may choose to file separately or jointly, and each brief and response should be no more than 10 pages each (15 if joint). Any response is due within 14 days and if defendants file a joint 15-page brief, Strous may respond with 15 pages. Replies are limited to five pages and are due seven days after any response is filed.

Dated: June 14, 2024


Cristina D. Silva
United States District Judge